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In re Application of  
Underbrink, et al.  
Application No. 09/164,432  
Filed: September 30, 1998  
Attorney Docket No.: 09060/069001  
For: USING A LOW FREQUENCY TIMER TO  
RESTORE TIMING TO A HIGH FREQUENCY  
TIMER

**OFFICE OF PETITIONS**  
ON PETITION

This is a decision on the petition under 37 CFR 1.181 to revive the above-identified application and the alternative petition to revive to revive under 37 CFR 1.137(b), filed June 14, 2001.

The application became abandoned December 20, 1998 for failure to timely respond to the Notice to File Missing Parts of Application ("Notice") mailed October 19, 1998. The Notice set a two (2) month period of time for reply. No extension of time in accordance with 37 CFR 1.136 were timely requested. Notice of Abandonment was mailed July 12, 1999.

Petitioner states a review of docketing records and the file jacket indicate the Notice was never received.

**PETITION UNDER 37 CFR 1.181**

In the absence of any irregularity in the mailing of the Notice, there is a strong presumption that the Notice was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. M.P.E.P. § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not received," 1156 O.G. 53 (November 16, 1993). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt

rather than a conclusion that the Office communication was lost in the mail.

Office records indicate the Notice was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Notice on the part of the United States Patent and Trademark Office.

Petitioner has failed to provide a true copy of a docketing report covering the period of time during which the Notice would have been received and, if appropriate, a copy of the file jacket where the Notice would have been recorded had it been received.

As petitioner has failed to establish non-receipt of the Notice, the petition to withdraw the holding of abandonment under 37 CFR 1.181 is hereby **DISMISSED**.

No petition fee is required in connection with a petition filed pursuant to 37 CFR 1.181. Petitioner is entitled to a refund of the previously submitted \$130.00 petition fee. Petitioner may request a refund by writing to the Finance Office, Refund Section. A copy of this decision should accompany any request for refund.

**PETITION UNDER 37 CFR 1.137(b)**

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The petition lacks item (2) set forth above. Any renewed petition must be accompanied by the petition fee set forth at 37 CFR 1.17(m).

The petition under 37 CFR 1.137(b) is hereby **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is not a final agency decision.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents  
Box DAC  
Washington, DC 20231

By facsimile: (703) 308-6916

By hand: Office of Petitions  
2201 South Clark Place  
Crystal Plaza 4, Suite 3C23  
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Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-0310.



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Office of the Deputy Commissioner  
for Patent Examination Policy